

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-4738

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ROBERT EARL DANIELS, JR.,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Charleston. David C. Norton, District Judge. (CR-03-731)

Submitted: April 22, 2005

Decided: May 24, 2005

Before WILKINSON, KING, and GREGORY, Circuit Judges.

Affirmed by unpublished per curiam opinion.

G. Wells Dickson, Jr., Charleston, South Carolina, for Appellant.
J. Strom Thurmond, Jr., United States Attorney, Alston C. Badger, Assistant United States Attorney, Charleston, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Robert Earl Daniels, Jr., pled guilty to conspiracy to possess with intent to distribute more than 50 grams of crack cocaine, 21 U.S.C. § 846 (2000) (Count One); possession of more than 5 grams of crack with intent to distribute, 21 U.S.C. § 841(a)(1) (2000) (Count Four); and possession of a firearm by a convicted felon, 18 U.S.C. § 922(g)(1) (2000) (Count Eight). The district court imposed a guideline sentence of 210 months for the drug offenses and a concurrent 120-month sentence for the firearm offense. The court also imposed an identical alternative sentence under 18 U.S.C.A. § 3553 (West 2000 & Supp. 2004), treating the guidelines as advisory only, pursuant to this court's recommendation in United States v. Hammoud, 378 F.3d 426 (4th Cir.) (order), opinion issued by 381 F.3d 316 (4th Cir. 2004) (en banc), vacated, 125 S. Ct. 1051 (2005).

Daniels appeals his sentence, contending that the judicially enhanced guideline sentence was imposed in violation of the Sixth Amendment under Blakely v. Washington, 124 S. Ct. 2531 (2004). He has also moved to suspend briefing, vacate the sentence, and remand his case for resentencing in light of the Supreme Court's decision in United States v. Booker, 125 S. Ct. 738 (2005), and this court's decision in United States v. Hughes, 401 F.3d 540 (4th Cir. 2005), on the ground that the alternative sentence was imposed without the benefit of Booker and Hughes. We

conclude that, because the alternative discretionary sentence was identical to the sentence imposed under the federal sentencing guidelines as they existed at that time, any error in the imposition of the sentence was harmless. See Booker, 125 S. Ct. at 769. Therefore, we deny the motion to remand for resentencing, and we affirm the sentence. Because this case was fully briefed when Daniels' motion was filed, we deny his request to suspend briefing as moot.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED